



# California Fair Political Practices Commission

March 5, 1987

Lawrence D. Saler  
City Attorney  
City of San Pablo  
1248 Solano Avenue  
San Pablo, CA 94706

Re: Your Request for Advice  
Our File No. I-87-041

Dear Mr. Saler:

You have requested advice on behalf of San Pablo City Councilmember Sharon Brown, concerning her duties under the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1/</sup> Your letter states only general questions; it does not seek advice concerning a specific pending decision. Therefore, we will provide only general advice in this letter and consider your request to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).<sup>2/</sup>

## QUESTIONS

1. By virtue of the fact that her husband is an employee of the waste collecting contractor in the City of San Pablo, is Councilmember Brown prohibited from participating as a member of the Solid Waste Management Authority in recommendations that:

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

- a. Affect the sanitary landfill site;
- b. Affect a proposed waste-to-energy plant;
- c. Affect her husband's employer?

2. Is Councilmember Brown prohibited from participating in other decisions which may be made by the Solid Waste Management Authority?

#### CONCLUSION

Councilmember Brown may not participate in any decision which will have a reasonably foreseeable material financial effect on Richmond Sanitary Services. We have not been provided with sufficient facts to make a determination regarding whether Councilmember Brown is prohibited from participating in any particular decision.

#### FACTS

Councilmember Brown's spouse is an employee of Richmond Sanitary Services, the waste collecting contractor in the City of San Pablo. He has no other interest in the company. Richmond Sanitary operates the West Contra Costa Sanitary Landfill (WCCSL).

The City of San Pablo is a member of the Solid Waste Management Authority (the "Authority"), a joint powers agency. Councilmember Brown is the City of San Pablo's alternate representative to the Authority's board.

You have provided us with a copy of the Authority's joint powers agreement. Pursuant to that agreement, the Authority is commissioned to:

- a. Review the proposed solid waste collection rate increases for disclosure and post-closure care of the WCCSL;
  - b. Explore the feasibility of:
    - (1) Expanding the WCCSL facility; and
    - (2) Developing methods which may increase the WCCSL life expectancy;
  - c. Examine various resource recovery methods such as:
    - (1) Recycling;
-

(2) Composting; and

(3) Waste-to-energy;

d. Assess the need for a transfer station located in the West Contra Costa County area;

e. Consider the development of a supplemental West Contra Costa County area;

f. Advise the party agencies on solid waste management issues;

g. Coordinate the actions and responses of the party agencies with regard to solid waste issues;

h. Formulate solid waste management policy statements;

i. Sponsor educational forums, workshops, and discussions on solid waste matters; and

j. Gather information necessary to carry out the foregoing purposes.

However, the Authority has no power to order implementation of its recommendations.

Currently, there is a proposal for the West Contra Costa Sanitary District and Richmond Sanitary Services to construct and operate a "burn plant" (also called a "waste-to-energy plant") to incinerate waste and sell generated electricity.

#### ANALYSIS

In her capacity as a member of the Authority's board, Councilmember Brown is a "public official" within the meaning of the Act. (Section 82048.) Section 87100 prohibits a public official from making, participating in, or using her official position to influence any governmental decision in which she knows or has reason to know she has a financial interest. An official has a financial interest in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on, among other economic interests, any source of income aggregating \$250 or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made. (Section 87103(c).)

"Income" includes "any community property interest in income of a spouse." (Section 82030.) Since Councilmember Brown's spouse is employed by Richmond Sanitary, Richmond Sanitary is a source of income of \$250 or more to Councilmember Brown. Accordingly, she may not participate in any governmental decision which will have a reasonably foreseeable material financial effect on Richmond Sanitary. The elements of foreseeability and materiality are discussed below.

#### Foreseeability

An effect is reasonably foreseeable if there is a "substantial likelihood" that it will occur. Certainty is not required; however, if the effect is but a "mere possibility," it is not considered reasonably foreseeable. (Thorner Opinion, 1 FPPC Ops. 198 (No. 75-089, Dec. 4, 1976), copy enclosed.) In the present situation, the Authority's recommendations do not assure that a certain effect will occur. However, if the Authority's recommendations create a "substantial likelihood" that an effect will occur, the effect is reasonably foreseeable.

In determining what the likely effect of the Authority's recommendations will be, you should consider whether in the past, the Authority's recommendations have been regularly approved without significant modification by the agencies which possess final decision-making authority.

#### Materiality

Regulations 18702, 18702.1 and 18702.2 (copies enclosed) provide guidance in determining whether the reasonably foreseeable effect of a decision on an official's economic interest will be "material." It is usually necessary to estimate the dollar value of the effect of a decision on the official's economic interest to determine whether the effect is material.

However, Regulation 18702.1 sets out certain special situations in which an effect is considered material regardless of its dollar value. In particular, Regulation 18702.1(a)(1) provides that a public official shall not participate in a decision if:

(1) Any person (including a business entity) which has been a source of income (including gifts) to the official of \$250 or more in the preceding 12 months appears before the official in connection with the decision;

Lawrence D. Saler  
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Since Richmond Sanitary is a source of income of \$250 or more to Councilmember Brown, she may not participate in any decision in which Richmond Sanitary appears before her in connection with a decision.

A person or business entity "appears before an official in connection with a decision" when that person or entity, either personally or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request;

(2) Is a named party in the proceeding concerning the decision before the official or the body on which the official serves.

Regulation 18702.1(b)(1) and (2).

In addition, the effect of a decision in which Richmond Sanitary does not appear may be considered material as to Richmond Sanitary based on the dollar value of the effect. Whether the dollar value of an effect on Richmond Sanitary will be considered material depends on the financial size of Richmond Sanitary. (Regulation 18702.2.)

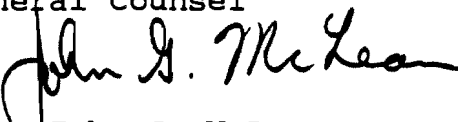
We have not been provided with sufficient facts in the present situation to determine whether Councilmember Brown is prohibited from participating in any particular decisions. The criteria discussed above should be used to make that determination.

You should also consider whether the provisions of Section 1090 may be a basis for concern. The Commission does not have authority to provide advice regarding Section 1090.

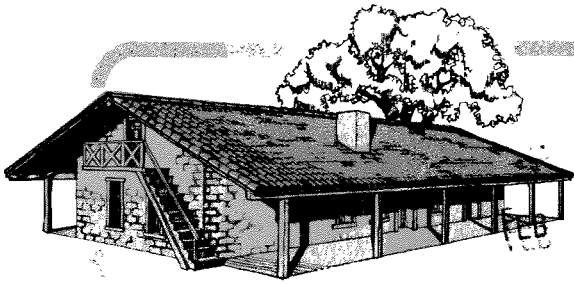
If I can provide further assistance, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

  
By: John G. McLean  
Counsel, Legal Division

DMG:JGM:plh  
Enclosures



alvarado adobe

# CITY OF SAN PABLO

san pablo, california 94806 • (415) 234-6440

Office of City Attorney

January 22, 1987

Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, CA 95814

Gentlemen:

Re: Opinion Requested

A written opinion is requested on the following facts and issues:

1. Sharon Brown is a Councilmember of the City of San Pablo. She is married to Leland Brown.
2. Richmond Sanitary Services is the collecting contractor for waste (garbage, etc.) in the City of San Pablo and other cities and county areas. It also operates the West Contra Costa Sanitary Landfill.
3. Leland Brown is an employee of Richmond Sanitary Services as a member of Local 315 Teamsters Union, and works in the field. He has no other interest in the company.
4. The City of San Pablo is a member of Solid Waste Management Authority, a Joint Powers Agreement (JPA). A copy of said Agreement is attached, indicating its purpose, powers and makeup.
5. Councilmember Sharon Brown is the alternate representative of the City of San Pablo.
6. There is currently an on-going proposal for the West Contra Costa Sanitary District and the Richmond Sanitary Services to construct and operate a "burn plant" to incinerate the waste and sell generated electricity. It is controversial and is known as the "Waste-to-Energy Plan".



Mailing Address:  
1248 Solano Avenue  
Albany, California 94706  
(415) 525-6457

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Re: Opinion Requested

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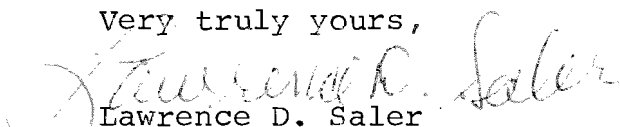
7. Among other things, the JPA (Solid Waste Management), as you can see on page 2 of the Agreement, is commissioned to:
  - a) Explore the feasibility of expanding the sanitary landfill;
  - b) Examine various recovery methods, such as: waste-to-energy.
8. The JPA has no power or authority to order implementation of its objective or commission.
9. The question has arisen as to the ability of Sharon Brown to participate or vote on issues when she sits as a representative, rather than as an alternate, because her husband is an employee of Richmond Sanitary Services.

Issues:

1. Can Councilmember Brown participate and vote on matters that would include recommendations that:
  - a) Affect the sanitary landfill site;
  - b) Affect the waste-to-energy plant;
  - c) Otherwise may affect the Richmond Sanitary Services?
2. Finally, as a catch-all, would she be disqualified from participating or voting on any of the other purposes set out in the JPA on page 2?

If you desire any further information or clarification, please contact me.

Very truly yours,

  
Lawrence D. Saler  
City Attorney  
City of San Pablo

LDS:bn

Enclosure



# California Fair Political Practices Commission

February 5, 1987

Lawrence D. Saler  
San Pablo City Attorney  
1248 Solano Avenue  
Albany, CA 94706

Re: 87-041

Dear Mr. Saler:

Your letter requesting advice under the Political Reform Act was received on February 2, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John G. McLean, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths  
General Counsel

DMG:plh  
cc: Sharon Brown